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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,292	12/12/2003	Jean Cotteret	LORE:008US	9950

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EXAMINER	
ELHILO, EISA B	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/735,292	COTTERET ET AL.	
	Examiner	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,4,6,8,11,14,17-19,22-26 and 35-109* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,4,6,8,11,22-26,35-55,59-85 and 89-109* is/are rejected.

7)☒ Claim(s) *14, 17-19,56-58 and 86-88* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1 This action is responsive to the amendment filed on January 9, 2006.

2 The cancellation of claims 2, 5, 7, 9-10, 12-13, 15-16, 20-21 and 27-34, is acknowledged. Pending claims are 1, 3-4, 6, 8, 11, 14, 17-19, 22-26 and 35-109.

3 Claims 1, 3-4, 6, 8, 11, 22-26, 35-49 and the newly added claims 50-55, 59-85 and 89-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese Patent No. (JP 60028912) in view of Lim et al. (US 6,461,391 B1) for the reasons set forth in the previous office action mailed on August 5, 2005.

4 Claims 14, 17-19, 56-58 and 86-88 are objected for the reasons set forth in the previous office action mailed on August 5, 2005.

Response to Applicant's Arguments

5 Applicant's arguments filed 1/9/2006 have been fully considered but they are not persuasive.

With respect to the rejection based on 103(a) as being unpatentable over the Japanese patent (JP' 912) in view of Lim et al. (US' 391 B1), Applicant argues that the action has not established a prima facie case of obviousness because the references do not teach or suggest all the limitations, there is no motivation to combine the references and there is no reasonable expectation of success to combine the references.

The examiner respectfully disagrees with the above arguments because the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally

available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case the three criteria have been met, because all references are in the same analogs art in hair dyeing composition.

The Japanese Patent (JP' 912 A) teaches a hair dyeing composition comprising oxidation dyes including the genus phenylenediamines in a combination with one or more species of monosaccharides such as species xylose of the genus aldose that has a 6 carbon atoms (hexose) and disaccharides (two units of monosaccharides) such as maltose, lactose and sucrose wherein each of them has 12 carbon atoms (see English abstract of the Japanese reference (JP' 912 A). Lim et al. (US' 391 B1) as a secondary reference, clearly teaches a hair dyeing composition comprising phenylenediamine compound substituted with quaternized pyrrolidine radical having a formula (I) (see col. 2, formula (I)), which is similar to the claimed formula (I), when in the claimed formula (I), R2 is a quaternized ammonium radical of a formula (II). It is further taught by Lim et al. that the quaternized pyrrolidine compounds are suitable intermediates for hair coloring compositions and systems for providing good oxidative coloration of hair and for providing acceptable light fastness, fastness to shampooing, fastness to permanent wave treatment, and suitable for providing a wide variety of different color shades with various primary intermediate and coupler compounds (see col. 2, lines 13-20). Therefore, there a sufficient motivation to one having ordinary skill in the art to be motivated to modify the dyeing composition of the Japanese reference by incorporating the quaternized phenylenediamine compound as an oxidation base as taught by Lim et al. (US' 391 B1) to arrive at the claimed

invention with a reasonable expectation of success for improving the properties and dyeing performance of the composition.

Further, with respect to the argument based on the amended claims (the incorporation of the limitations of formulae (III) and (IV) into independent claim 1), the examiner would like to point out that the amended claims do not obviate the teaching of the prior art (US' 391 B1) because these limitations are recited in the alternative and not necessarily to be presented in the claims. Therefore, Lim et al. teaches oxidation base compounds that read on the claimed formula (II) as one of the alternative formulae recited in the claims. Therefore, the rejection under 103(a) is proper and maintained.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Further, Applicant has not shown on record the criticality of the claimed composition over the compositions of the prior art references.

6 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eisa Elhilo
Primary Examiner
Art Unit 1751

February 23, 2006